

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMERCIAL STEEL ERECTION, INC. 1/

Employer

and

Case No. 11-RC-6446

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 147,  
AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) (7) of the Act for the following reasons:2/

(see attached)

**ORDER**

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 29, 2001**.

Dated June 15, 2001

at Winston-Salem, North Carolina

/s/Willie L. Clark, Jr.  
Regional Director, Region 11

- 1/ The name of the Employer appears as corrected at the hearing.
- 2/ The Employer, Commercial Steel Erection, Inc., is a Virginia corporation, with a facility located in Amherst County, Virginia, and is engaged in the business of steel erection, industrial services, and crane rental services. During the preceding twelve (12) months, the Employer in the course and conduct of its business operations derived gross revenues in excess of five hundred thousand dollars (\$500,000). During the same twelve (12) months, the Employer purchased and received at its Amherst facility, products, goods, and materials valued in excess of fifty thousand dollars (\$50,000) directly from points outside the Commonwealth of Virginia.

IMF, located in Roanoke, Virginia, was a company that was engaged in the business of steel erection and crane rental service, with some industrial work. The Employer acquired IMF in an asset purchase with an effective date of June 1, 2001, and hired between 30-35 of IMF's former employees, including 11 employees who were previously represented by the Petitioner. The Petitioner seeks to represent a unit of those 11 former IMF employees including crane operators, mechanics, and apprentices/oilers reporting and/or dispatched from IMF's Roanoke location.<sup>1</sup> The Employer, which presently has a facility in Amherst County, in the Lynchburg area<sup>2</sup> of Virginia, contends that the petitioned-for unit is inappropriate, and that a plant-wide unit consisting of approximately 125-130 employees engaged in production and maintenance, including ironworkers, millwrights, riggers, welders, laborers, operators, drivers, mechanics, and tool room attendants is the only appropriate unit.

The parties submitted briefs which have been carefully considered.

The Petitioner basically contends that a bargaining unit of the 11 former IMF employees remains appropriate under the theory that a single-location constitutes an appropriate unit. Although there is a presumption that a single location facility is appropriate, that presumption is rebutted where the evidence shows that the employees at the single facility are no longer an identifiable, cohesive grouping but have been so "effectively merged" or "functionally integrated" into a larger unit that "[the unit] has lost its separate identity . . . ." *R & D Trucking, Inc.*, 327 NLRB 531, 531 (1999). In such cases, the Board examines a number of factors, including the "extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any." *Id.* at 532.

As an initial point, I note that the Employer only acquired IMF, which has ceased operations, 4 business days prior to the hearing. In that regard, the new operation is necessarily in its infancy and, to some extent, the evidence presented from both sides is somewhat speculative. The record does show that the Employer provides a wider range of services, employs more employees, and performs services in a broader geographic territory and on a larger scale than IMF.

The Employer's Lynchburg facility contains offices, a maintenance shop, wash facility for equipment, storage yard, crane yard, etc. The Employer is considering acquiring a site in the Roanoke area, but does not presently own or lease a facility in the Roanoke area. The Employer had until June 15, 2001, to occupy IMF's facility. The Employer has already moved tools, equipment, trucks and some cranes from IMF's Roanoke facility to the Employer's Lynchburg facility.

---

<sup>1</sup> The Employer did not hire any mechanics from IMF. The Employer has 3 mechanics, including a road mechanic who services cranes on job sites as well as welding machines, lifts, manlifts, forklifts, etc. The Employer does not have any employees in the classification of apprentices/oilers.

<sup>2</sup> To clarify, the Employer has one facility. Amherst, Lynchburg, and Madison Heights are synonymous terms. For simplicity's sake, I will refer to the Employer's facility as the Lynchburg facility.

The Employer has a total of between 30-34 crane operators and drivers who deliver the cranes, including the 11 employees acquired from IMF. Those employees, as well as the Employer's other employees, work on projects for customers in the Mid-Atlantic and Southeast regions including North Carolina, South Carolina, and Virginia. Employees may report to the customer's site directly.

The record demonstrates that the Employer controls daily operations including personnel and labor relations matters solely from its Lynchburg facility and the Employer affirmatively stated that such centralized control would continue. Lisa Moon Stinnette, a minority owner, oversees the safety program and manages the Employer's day-to-day operations along with her brother Bobby Moon. Stinnette is also the primary Human Resources person. Hiring, firing, training, and job assignments are made from the Lynchburg facility. At any given time, the Employer has a number of projects at various work sites. The work is reviewed and the work force mobilized by different people from the Lynchburg office depending on the nature of the work, that is, whether the work is a steel erection job, a crane job, or an industrial job. Thus, although the record shows that since the acquisition workers have been dispatched, in part, by former IMF employees, the record does not indicate that there is, or will be, any local autonomy or separate line of supervision from a future Roanoke site. See Second Federal Savings & Loan, 266 NLRB 204, 204-206 (1983), where the Board was persuaded that the Employer's highly centralized personnel operation rebutted the presumption that a single-facility unit was appropriate. Accord Border Steel Rolling Mills, Inc., 204 NLRB 814, 822 (1973). In that regard, the Petitioner's reliance on J & L Plate, 310 NLRB 429, 429-430 (1993), is misplaced. As shown, the local autonomy and separate line of supervision found in that case, and the significant fact that the two groups of employees had distinct functions are not present in the instant case.

The record further shows that the 30-34 crane operators and drivers (including the formerly represented IMF workers) have similar skills, training, qualifications, and experience. Their job functions, classifications, and working conditions are the same. They receive the same benefits. While the Employer did indicate that the former IMF employees were currently continuing with their IMF wage rates (which were generally lower than the Employer's other employees), it was anticipated that they would eventually be paid the same wage rates as the Employer's other employees, but the Employer needed time to evaluate them.

In addition, it is significant that the Employer is not organized along strict geographic lines or territories. Employees do not work exclusively in one particular geographic area. Rather, the Employer makes a needs-based assessment in determining its manning requirements. Thus, former IMF employees will not be working exclusively in the Roanoke area but have already been, and will be sent to projects in other geographic areas. With respect to interchange among employees, in that regard, former IMF employees, have already been, and will continue working with the Employer's employees on various projects. There are also company-sponsored social events for all employees. See generally P.S. Elliott Services, 300 NLRB 1161, 1161, 1161-1162 (1990), where the employer serviced 90 cleaning accounts and employed approximately 175 people. The employer bid on a contract to perform cleaning services for a particular building where 8 employees had been unionized. The Board, relying on common supervision out of the central office, uniform and centrally administered personnel policies and employee benefits, and frequent employee interchange, found that those employees did "not have a community of interest sufficiently distinct and separate from the [Employer's] other employees" but had been integrated into the Employer's existing operation. Accord Orkin Exterminating Company, Inc., 258 NLRB 773, 773-774(1981). Compare School Bus Services, 312 NLRB 1, 5 (1993), enforced mem. 46 F.3d 1143 (9<sup>th</sup> Cir. 1995), where the terms and conditions of employment, skills, and duties of school bus drivers were "sufficiently diverse" from those of paratransit drivers to support a finding that the latter group remained a viable bargaining unit.

In sum, despite a history of bargaining in the petitioned-for “IMF” unit, I find that the record evidence does not establish that it remains a functionally distinct group with common interests sufficiently separate from the Employer’s other crane operators and drivers to warrant a separate appropriate unit. Since the Petitioner did not affirmatively indicate a desire to participate in a unit other than the requested unit, I shall dismiss the petition.

420 2300 0000 0000  
440 1700 0000 0000

420-2300-0000-0000; 440-1700-0000-0000
--